

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
240-777-6600

**Case No. A-6070**

**APPEAL OF CHESAPEAKE WILDLIFE SANCTUARY, INC.**

OPINION OF THE BOARD

(Hearing held June 29, 2005)  
(Effective Date of Opinion: September 8, 2005)

Case No. A-6070 is an administrative appeal filed by Dianne D. Pearce, President, and Victor G. Riemer, Vice President, on behalf of the Chesapeake Wildlife Sanctuary, Inc. (the "Appellants"), located at 13630 Georgia Avenue, Silver Spring, Maryland 20906 ("the Property"). Appellants charge administrative error on the part of the County's Department of Housing and Community Affairs ("HCA"), and appeal from a letter issued by HCA and dated April 5, 2005, which states that since Appellants failed to abide by the August 24, 2004 Order for Abatement issued by the District Court of Maryland for Montgomery County, the County would enter the Property, and would remove all solid waste including, but not limited to, the boat on cinderblocks.

Pursuant to Section 2-112 of the Montgomery County Code, the Board scheduled a public hearing on the appeal for June 29, 2005. Appellants were not represented by counsel, and did not appear at the hearing. Associate County Attorney Joanne M. Brown represented HCA.

Decision of the Board:      Administrative appeal **dismissed**.

**FINDINGS OF FACT**

**The Board found, based on the preponderance of the evidence, that:**

1. The subject Property is known as 13630 Georgia Avenue, Silver Spring, Maryland 20906, and is owned by the Chesapeake Wildlife Sanctuary, Inc.

2. A Uniform Civil Citation (No. 0Z33920236) was issued for the Property on 5/25/04, for violation of Chapter 26 of the Montgomery County Code, section 26-9(a)(12), noting "failure to repair and display valid tags or remove (automobile/vehicle - boat)."

3. An Order for Abatement was issued by the District Court of Maryland for Montgomery County on August 24, 2004, after a trial in connection with the above-referenced civil citation.

4. HCA issued a letter to Appellant Pearce, dated April 5, 2005, which stated that since she had failed to abide by the District Court's August 24, 2004 Order for Abatement, the County would enter the Property, and would remove all solid waste including, but not limited to, the boat on cinderblocks.

5. On April 15, 2005, Appellants filed an appeal from the April 5, 2005 letter with the Board of Appeals.

6. The Board held a pre-hearing conference with respect to this appeal on May 25, 2005. At that time, Ms. Brown was informed that the County's pre-hearing submission would be due on June 9, 2005, and Ms. Pearce, on behalf of the Appellants, was informed that Appellant's pre-hearing statement would be due on June 20, 2005. A June 29, 2005 hearing date was set.

7. On June 9, 2005, Ms. Brown filed the required pre-hearing submission on behalf of HCA.

8. Appellants did not file a pre-hearing submission (timely or otherwise).

9. On June 28, 2005, Appellants sent a letter to the Board requesting that the hearing scheduled for the next morning be postponed and rescheduled because Appellants had belatedly learned that they needed to appear in District Court in Silver Spring at 8:30 a.m. the following morning.

## **CONCLUSIONS OF LAW**

1. Section 2-112(c) of the Montgomery County Code provides the Board of Appeals with appellate jurisdiction over appeals taken under specified sections and chapters of the Montgomery County Code, including sections 2B-4, 4-13, 8-23, 15-18, 17-28, 18-7, 22-21, 23A-11, 24A-7, 25-23, 29-77, 39-4, 41-16, 44-25, 46-6, 47-7, 48-28, 49-16, 49-39A, 51-13, 51A-10, 54-27, and 58-6, and chapters 27A and 59.

2. Section 2A-2(d) of the Montgomery County Code provides that the provisions in Chapter 2A govern appeals and petitions charging error in the grant of denial of any permit or license or from any order of any department or agency of the County government exclusive of variances and special exceptions,

appealable to the County Board of Appeals, as set forth in Section 2-112, Article V, Chapter 2, as amended, or the Montgomery County Zoning Ordinance or any other law, ordinance or regulation providing for an appeal to said board from an adverse governmental action.

3. Section 2A-7(a) of the Montgomery County Code requires, in any case in which the County government, or a department, office or agency thereof is a party, that the County provide the hearing authority (in this case, the Board of Appeals) and all parties and/or counsel of record with a pre-hearing submission setting forth (1) all supporting documents to be relied on at the hearing, (2) a list of prospective witnesses and summaries of their expected testimony, (3) a list of any persons requested to be summoned by the hearing authority and any documents or records to be subpoenaed, and (4) an estimate of time needed to present the case. The County's pre-hearing submission is due no later than twenty (20) days prior to the date set for the hearing. Section 2A-7(a) further permits the hearing authority to require that any party to the proceeding submit this same information, no later than 10 days prior to the date set for the hearing.

4. Section 2A-8(j) of the Montgomery County Code authorizes the hearing authority (again, in this case, the Board of Appeals) to impose sanctions against parties for failure to abide by the provisions of this article, or for unexcused delays or obstructions to the pre-hearing and hearing process. These sanctions include the dismissal of actions.


5. Pursuant to section 2A-8(i)(5) of the Montgomery County Code, the Board began the hearing by disposing of all outstanding preliminary motions and preliminary matters. Pursuant to this section and the Board's authority under section 2A-8(h) to rule upon motions, the Board denied the Appellants' request for a continuance. Pursuant to section 2A-8(j), the Board then voted to dismiss this appeal because of the Appellants' failure to submit to the Board the required pre-hearing submission.

6. The Board notes, although it did not reach this issue at the hearing, that it has no jurisdiction under section 2-112 of the Montgomery County Code to hear appeals arising from violations of section 26-9 of the County Code.

7. The appeal in Case A-6070 is **DISMISSED**.

On a motion by Wendell M. Holloway, seconded by Donna L. Barron, with Louise L. Mayer, Angelo M. Caputo, and Allison Ishihara Fultz, Chair, in agreement, the Board voted 5 to 0 to dismiss the appeal and adopt the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.



Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 8<sup>th</sup> day of September, 2005.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 2A-10(f) of the County Code).

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure (see Section 2-114 of the County Code).